

EXHIBIT D

THE NEWARK LEGAL SERVICES PROJECT

Reply

to

Presentment of Eighth Grand Jury

(Essex County) 1967 Term

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I. Introduction

Almost six months after the occurrence of the disorders which took place in Newark during July of 1967, an Essex County Grand Jury was convened to investigate the 26 deaths which took place during those disorders. The Grand Jury handed down no indictments, but on April 23, 1968, it issued a presentment.

The presentment stated that the Grand Jury found no criminal misconduct in connection with 16 of those deaths and that the Grand Jury found no criminal misconduct on the part of any identifiable individual in connection with 9 deaths.

In addition the presentment directed public censure at The Newark Legal Services Project, a project supported by public and private funds to provide legal services to the poor in the City of Newark.

Without ever being informed that charges were being made against it, without ever having had an opportunity to know who its accusers were or what they said, without being given any opportunity to

examine the presentment or the evidence upon which it was based, and without ever being given an opportunity to answer the statements made in the presentment, NLSP found itself unfairly attacked in a document first communicated to it via the public press.

It is small wonder that the Chief Justice of New Jersey, referring to presentments such as this one which purport to recite facts based upon testimony before a Grand Jury, stated, "I can think of no fact-finding procedure more hostile to the basic tenets of the judicial process than the procedure of a grand jury. It meets in secret; it conducts its hearings unilaterally; there is no opportunity in the individual affected to cross-examine witnesses against him or to produce evidence in his favor." In re Presentment by Camden Co. Grand Jury, 34 N.J. 403 (1961) at p. 403.

By the utilization of such a procedure, a totally false and misleading impression concerning the operations of NLSP during and immediately after the disorders has been given public currency. This Reply seeks to do two things. First, it seeks to describe the serious deficiencies in the procedures which resulted in the presentment. Second, it seeks to point out those respects in which the statements concerning NLSP contained in the presentment are false or misleading.

II. Deficiencies in Presentment Procedure

A. Deficiencies of Grand Jury Presentments in General: All presentments are subject to serious dangers of abuse. Unlike indictments, presentments do not deal with the relatively narrow question of whether or not a particular crime was committed by a particular individual. Rather, they delve into matters of general public policy and concern. These are areas where facts and opinions become mingled and where one's social and political views begin to shape the selection and manner of presentation of the facts and the conclusions to be drawn from the facts.

Unlike an indictment, a presentment attacks without giving the slightest opportunity to defend. As the New Jersey Supreme Court has stated, "Such a presentment unless thoroughly justified is a foul blow. It wins the importance of a judicial document; yet it lacks [the] principal attributes [of such a document] -- the right to answer and to appeal. It accuses but furnishes no forum for a denial. No one knows upon what evidence the findings are based. An indictment may be challenged -- even defeated. The presentment is immune. It is like the 'hit and run' motorist. Before application can be made to suppress it, it is the subject of public gossip. The damage is done. The injury it may unjustly inflict may never

be healed." In re Presentment by Camden Co. Grand Jury, supra,
at p. 390.

By reason of the basic unfairness of the presentment device, many states never permit a grand jury to issue a presentment. New Jersey does permit presentments, but the courts of New Jersey are quick to point out the dangers of abuse. Unfortunately, the public at large is generally unaware of those dangers.

B. Deficiencies of the Grand Jury Procedures in the Present Situation: In the case of this Grand Jury, not only did the normal deficiencies of the presentment procedure prevail, but, in addition, special circumstances prevailed which require that the conclusions of this Grand Jury be analyzed with even more than the usual caution.

In the first place, at the time of the Grand Jury hearings, NLSP's Administrator, Oliver Lofton, was engaged in defending the cab driver whose arrest triggered the disorders. As a part of that defense and on behalf of many other defendants, Mr. Lofton had challenged the process by which grand juries (including the one which issued the presentment) are selected. The basis of the challenge was that the selection procedure results in grand juries which are totally unrepresentative of the over-all population of Essex County. The assistant prosecutor who represented the State

in that action in which NLSP opposed him was the one who presented the evidence to the Grand Jury which issued the presentment criticizing NLSP.

Further, the Prosecutor's Office had itself just been subjected to criticism by the Governor's Select Commission on Civil Disorder, which viewed "with concern" the fact that as late as January 10, 1968, action had not yet been completed with respect to deaths which occurred during the disorders. The Report stated that the homicides should be quickly and exhaustively investigated and resolved by appropriate grand juries. Unavoidably the question arises whether one of the concerns of the Assistant Prosecutor in presenting evidence to this Grand Jury was to divert attention from the failure of the Prosecutor's Office to have acted with appropriate zeal at an earlier date.

Analyzing the presentment, the President of the New Jersey State Bar Association saw it as an attempt "to shift the burden of responsibility for effective law enforcement from the office where it resides by law, to an office which in necessity of the situation was called upon to perform a trying and unusual community peace-keeping function.....Instead of criticizing the form, or even the substance of witnesses' statements, the Grand Jury might better have asked why the prosecutor's office wasn't doing the same job."

The procedures followed in this Grand Jury investigation and in the handling of the presentment are alone sufficient to cast grave doubts upon the objectivity of the inquiry and of the document which was the product of the inquiry. The procedures which raise such questions are the following:

1. Witnesses: From subsequent public statements of the foreman of the Grand Jury, it is apparent that there was a "lack of civilian witnesses, although local and state police, the FBI and National Guard officials all appeared." The assistant prosecutor handling a grand jury investigation has subpoena power available to him and, as a practical matter, has decisive influence upon the course of the entire proceedings. It was certainly within his power to have remedied the balance between civilian and police witnesses had he wished to do so.

Ever since NLSP determined as a matter of policy that it should receive complaints against law enforcement personnel and seek remedies for grievances in this area, it has been subjected to severe attacks by many police officials. In the give and take of public discussion, there is no reason why these matters cannot be debated back and forth. Undoubtedly these same attacks were made before the Grand Jury. The problem there, however, was that NLSP

would not know what the attacks were and would not be in a position to answer them. Subsequent statements of certain police officials clearly indicate that they view the presentment as a means of discrediting or neutralizing the Governor's Commission Report and the President's Commission Report, both of which recognized and proposed remedies for the kinds of police abuses which were and are the concern of NLSP.

Most of that portion of the Grand Jury presentment which discussed NLSP dealt with the statements assembled by NLSP. Only two members of NLSP's staff were subpoenaed to testify before the Grand Jury. One was its Administrator, Oliver Lofton, Esq. His knowledge concerning the taking of the statements was limited because during and immediately after the period of disorders he was working with the Governor's staff as liaison with the Negro community. The other was George C. Brown, NLSP's Chief Investigator, who had only limited knowledge concerning the statements.

The President of NLSP's Board of Trustees was not subpoenaed, although he was permitted to testify at his own request. The person in actual charge of the NLSP office who had direct responsibility for the taking and custody of the statements, Mrs. Annamay T. Sheppard, the Project's Assistant Administrator, was never called

to testify. Neither was Howard Kestin, Esq., Director of the State Office of Legal Services, who was present in NLSP's office much of the time during the disorders helping to coordinate the efforts of all of the State's legal service agencies. If the Grand Jury really wished to have complete and accurate information concerning the statements, it is surprising that it did not call all of those persons who were most intimately involved with the taking and custody of the statements.

Junious Williams, a third-year law student at Yale Law School and director of the Newark Area Planning Association (NAPA), was the director of a VISTA summer program involving seven other law students. They worked under the sponsorship of NLSP. He also was subpoenaed and testified.

A professional photographer not at any time associated with NLSP received a subpoena and testified concerning photographs taken by him of the body of one of the deceased.

2. Release and Distribution of the Presentment: The manner in which the Grand Jury presentment was completed and released to the press without NLSP ever being advised of the charges against it is also a matter of serious concern.

The New Jersey Criminal Practice Rules recognize the basic

unfairness of permitting an attack to be made against a public official without giving him an opportunity to defend himself. If a presentment is critical of such an official, it is the practice to notify the person mentioned and afford him an advance opportunity to inspect the relevant evidence on the subject matter and to be heard on the question of whether the reference to him should be expunged before filing. In addition, the person mentioned may introduce evidence to expose any deficiency in the evidence before the grand jury, In re Presentment of Essex Co. Grand Jury, 46 N.J. 467 (1966), Rule 3:3-9(c).

The presentment criticizing NLSP did not mention the name of any individual connected with NLSP (whether by design, or otherwise, is not known), and therefore it is a situation which is not within the literal language of Rule 3:3-9(c). Nevertheless, a number of individuals are so closely associated with NLSP that an attack upon NLSP is in effect an attack upon them and upon their professional reputations. The spirit of Rule 3:3-9(c) and all considerations of fairness certainly required that NLSP be given advance notice of the charges against it and an opportunity to present evidence and be heard.

No such procedure was followed. Instead, a Grand Jury

which was assigned the task of investigating 26 death cases prepared a presentment castigating a legal aid organization and charging it with misconduct. No notice was given to NLSP, and no opportunity to review the evidence or prepare a defense was accorded. Rather, the Grand Jury requested "that copies of this Presentment be made available, without delay, to the press." Such copies were made available to the press so that the first notice NLSP had came in the form of headlines in the daily newspapers. After publication in the newspapers, a copy of the presentment was made available to NLSP.

III. Analysis of Presentment

NLSP has been denied access to the Grand Jury minutes, and it was never given an opportunity to rebut or defend. This statement is, therefore, designed to do that which NLSP was never given an opportunity to do prior to the publication of the presentment. It will seek to set the record straight and to correct the numerous errors and distortions which permeate the presentment.

This statement does not concern itself with the presentment insofar as it purports to present an analysis of the various deaths, and it does not comment upon the value judgments and policy determinations which are either implicit or explicit in the recommendations and observations of this particular Grand Jury.

A. NLSP's Role During Disorders A reading of the presentment shows that the Grand Jury had no understanding whatsoever of NLSP's role during the disorders of July, 1967.

The Public Defender system had barely been inaugurated and did not have the manpower to handle the deluge of cases which arose by reason of more than a thousand arrests. NLSP had to provide attorneys and law students to assist the Public Defender during the first two weeks of the crisis. NLSP's 14 staff attorneys, its secretaries, its 18 summer students, its volunteer attorneys and its volunteer students all operated from its administrative office on Branford Place to provide the manpower needed by the Public Defender and the Courts and to carry on NLSP's own work. In addition to providing attorneys for arraignment and students and attorneys to interview those under arrest, NLSP had to continue to handle the streams of persons who came to it for help in all manners of situations. A chronological summary of these activities follows. It should serve to place in perspective the matters to which the Grand Jury has directed itself.

The first episode of serious disorder occurred at and around Newark's Fourth Precinct during the evening of Wednesday, July 12th, after the arrest of the now-famous cab driver, Mr. Smith. As is often the case, when a serious community crisis arises, NLSP's

Administrator, Oliver Lofton, and other Negro leaders were called in. They sought to divert the crowd away from the Precinct by calling for a march to City Hall. In an effort to calm the crowd at the Precinct, Mr. Lofton undertook to provide legal representation for Mr. Smith, a commitment which he has faithfully met since that night.

The next day, Thursday, was one of mounting tension in the City. Full-scale disorder broke out on Thursday night, resulting in the call for the State Police and the National Guard.

On Friday morning, NLSP closed its neighborhood offices and brought its full staff of attorneys and students into its central office on Branford Place. That office was located across the street from the front line of troops and military vehicles which cordoned off the Central Ward. It remained a place where people from the ghetto could come for help, which they did in vast numbers.

Mr. Lofton was working with the leaders of the Negro community. NLSP's Assistant Administrator, Annamay Sheppard, cut short her vacation to take over the management of the Project's work.

The Newark Magistrate's Court was being deluged with persons under arrest who required legal representation. At the request of the State authorities, NLSP made all of its attorneys available to

assist the Public Defender in the Magistrate's Court. In addition, many of NLSP's volunteer attorneys agreed to come in and help. Working days and on into the night Friday and during the weekend, NLSP's staff and volunteer attorneys helped process these cases.

At the headquarters, the Project was deluged with telephone calls concerning missing relatives, and an information system was devised.

On Friday night Governor Hughes asked Mr. Lofton to become the official liaison between his office at the State Police Command Post and the people in the ghetto area, a role which he filled until the end of the emergency, working night and day.

Saturday's activities were more of the same for NLSP's attorneys and volunteers -- assisting the Public Defender in the Newark Magistrate's Court. The disturbances seemed to be easing. On Saturday afternoon, reports began coming into NLSP's headquarters of developing problems in the Central Ward -- sanitation problems, shortages of food and milk, medical shortages. Through Mr. Lofton, this information was forwarded to the State authorities.

On Sunday a very serious crisis arose. Throughout the day NLSP was deluged with reports that during the early morning hours on many streets in the disturbed area law enforcement officers, primarily

State Troopers according to the reports, deliberately broke the windows and shot up many Negro-owned stores which had survived the disorders. It was reported to NLSP, for example, that on West Market Street, none of the stores had suffered any serious damage at all during the disorders, but that in the early hours of Sunday morning, persons firing from State Police Cars shattered the windows of all stores on which the slogan "Soul Brother" or "Soul Sister" appeared. A few white owners who used this legend lost their windows in the process.

In addition, there were reports of wild, indiscriminate shooting which was causing needless deaths and injuries among innocent victims.

Similar reports flooded local churches that morning, and NLSP was faced with a community outraged by these events. Tension which had seemed to have been dying down flared violently, affecting now the middle class Negro community.

NLSP personnel urged the people and the groups who brought those reports to it not to take the law into their own hands or to retaliate in any way and assured them that if they gave NLSP all of the facts, NLSP would bend every effort toward obtaining relief for them through judicial and administrative agencies. As a result, the

NLSP office was overwhelmed with such reports for a two or three week period after the Sunday when the Negro store windows were broken.

After receiving the reports of destruction of Negro business properties and of other abuses on Sunday, July 16th, NLSP's President, Dickinson R. Debevoise, joined with Malcolm Talbott, Vice President of Rutgers University, and various church leaders in calling a meeting at the Robert Treat Hotel on Sunday evening. About 75 white labor, business and church leaders met, heard first hand accounts of what was happening and sent a delegation to the Governor's headquarters in the Armory to bring it to his attention and to try to convey a sense of the seriousness of these developments. The problems were eased when the State Police and the National Guard were withdrawn the following day.

On Monday and for the balance of the week after the disturbances, NLSP at the request of the Court and the Public Defender assigned its law students and some of its attorneys to interviewing prisoners at the Armory, Caldwell Penitentiary and the Newark Street Jail. In some of the detention areas unsanitary conditions were creating a dangerous situation. In addition, law students and attorneys volunteered to help, and in a matter of days more than 700 interviews were conducted. This gave the Courts the information

needed to release hundreds of persons being held on a variety of charges.

On Tuesday after the disturbances, NLSP started reopening its neighborhood offices to handle the multitude of problems which the people of the stricken area brought into the offices. The events of the previous week served only to compound the terrible difficulties which affected these people, and NLSP picked up again with the job of providing legal representation in the civil law field to the poor in the City of Newark.

For this work, NLSP has received the commendation of Earl Johnson, National Director of Legal Services; William S. Greenawalt, then Regional Director of Legal Services; Paul Ylvisaker, Commissioner of Community Affairs of New Jersey; Howard Kestin, then State Director of Legal Services, who was at NLSP headquarters through most of these hectic days; Governor Richard J. Hughes; a committee of the New Jersey State Bar Association which conducted an inquiry into NLSP's activities, among others. Both NLSP and its President were the recipients of the first OEO Urban Services Awards for their efforts, especially during the period of the Newark disturbances.

B. Specific Allegations of Presentment: The various allegations

of the presentment criticizing NLSP are set forth below, and each is analyzed.

1. NLSP's COOPERATION WITH LAW ENFORCEMENT AGENCIES:

"Early in its investigation, the Jury became aware of the Newark Legal Services Project, an organization existing for the avowed purpose of providing legal counsel in civil matters to the underprivileged in Newark. In this area, this agency has unquestionably gained the confidence and trust of those it serves and, in fact, one of its officials was named to the Governor's Commission. Because of the regard it has gained in the community, many persons having knowledge of the homicides and other incidents related to the riot either voluntarily or through the advice of friends went to the Legal Services Project offices where statements were prepared from the information proffered. The Jury considered it significant that none of these persons were directed to the Prosecutor's office with their information. In fact, it was only after requests by the Prosecutor that these statements were finally made available to the Grand Jury." (Emphasis supplied)

Here is a criticism which requires careful scrutiny because it is characteristic of all of the allegations directed at NLSP by the Grand Jury. The obvious implication is that NLSP withheld data in its possession from the agencies of law enforcement despite multiple requests for the production thereof. The facts are otherwise. The records of NLSP and the testimony of Brendan T. Byrne elicited on November 27, 1967, by the Governor's Select Commission on Civil Disorder show that:

a. Between July 18, 1967 and August 8, 1967, copies of all statements on police conduct received by NLSP were forwarded to Dickinson R. Debevoise, Esq., President of NLSP's Board of Trustees, who analyzed and summarized those statements.

b. On August 8, 1967, a report based on the summary and analysis was presented to a special meeting of NLSP's Board of Trustees which authorized the immediate furnishing of the statements concerning police conduct to the Attorney General of the United States, the Governor's Select Commission on Civil Disorder, and the President's Advisory Commission.

c. On August 21, 1967, a copy of the summary and analysis was forwarded to:

- (1) Arthur J. Sills, Attorney General of New Jersey,
- (2) David Satz, United States Attorney for New Jersey,
- (3) Albert Black, Chairman, Newark Human Rights

Commission.

d. On August 24, 1967, a copy of the summary and analysis was sent to Brendan T. Byrne, Prosecutor of Essex County with a letter which read:

"Dear Brendan:

Enclosed is a summary of the statements
received by the Newark Legal Services Project

to date concerning certain law enforcement activities, during the riot. Where people complained of criminal behavior and can identify the persons involved, we are trying to persuade them to bring the information either to you or the FBI."

e. On October 24, 1967, copies of all affidavits, signed and unsigned, were provided to the Governor's Select Commission.

f. On or before November 10, 1967, copies of all affidavits, signed and unsigned, were provided to the President's Advisory Commission.

g. On November 21, 1967, copies of all affidavits relating to the destruction of Negro business property were provided to Arthur J. Sills, Attorney General of New Jersey.

h. On December 1, 1967, NLSP received its first request from the Essex County Prosecutor's Office for riot death affidavits. In response thereto, all affidavits, signed and unsigned, on every subject, were provided to the Prosecutor on or before December 12, 1967.

In view of these facts, it is curious indeed that the Grand Jury saw fit to criticize NLSP for what amounted to foot dragging. If the Prosecutor's office required NLSP's work product for its investigation, one cannot help but wonder why its request came so late -- especially in view of the fact that a summary of the

statements was sent to the Prosecutor as early as August 24, 1967, and the existence of such statements had been reported in the newspapers long prior to August 24, 1967. Either the Grand Jury ignored data before it in shaping its presentment, or else the Prosecutor's Office did not disclose such information to the Grand Jury.

"According to the evidence no one who had gone to the Legal Services Project with information regarding any of the homicides under investigation was instructed by the Project to convey such information to the Prosecutor's office."

On August 8, 1967, when NLSP's Board first deliberated upon the question of which agencies should receive its work product immediately, the Essex County Prosecutor's Office was not selected as one of those agencies. The reasons for this were multiple:

a. Specific identifying data was lacking in most of the affidavits concerning police conduct.

b. The affidavits, together with other information, provided the basis for a federal civil rights action approved on August 8, 1967, but filing of which could not be accomplished for a period of time thereafter (Kidd, et al. v. Addonizio, et al., U.S.D.C., Dist. N.J., Civil Action No. 899-67).

c. On July 21, 1967, the complaint of John W. Smith

against the two Newark patrolmen who had arrested him on July 12, 1967, (charging that they had fractured his ribs and inflicted other injuries upon him) was refused by the Chief Magistrate of the Newark Municipal Court. On or about that date, the Chief Magistrate advised the NLSP attorney who was seeking to lodge a complaint on Smith's behalf, that he must go to the Essex County Prosecutor's office to accomplish this, since, he, the Magistrate, was not going to accept complaints against the police. Thereafter, on or about July 25, 1967, the NLSP attorney met with an Assistant Prosecutor, who stated that his office could not accept the complaint either.

A further attempt to file was made in the Municipal Court on or about July 26, 1967. The complaint again was refused by the Chief Magistrate who told the NLSP attorney to "come back tomorrow." Indeed, it was only after the intervention of the Assignment Judge that the Chief Magistrate was required to accept complaints against police in the usual manner. These facts are a matter of public record and were known to the Board on August 8, 1967. They and other experiences recited below indicated to the Board of Trustees that the Prosecutor's Office was not anxious to proceed in this area.

d. At a date prior to August 8, 1967, a Newark minister had come to NLSP seeking help in reporting an incident observed by him shortly after the disturbances, which he believed involved Newark policemen. The witness was escorted to police headquarters by an NLSP attorney where both were advised that the police department was not accepting intra-departmental complaints against the police. This "ruling" of the police was stated to be still in force a week later when the NLSP attorney called police headquarters in a further effort to lodge intra-departmental charges. In the interim, the witness' statement was given to the FBI on the instructions of the NLSP attorney.

e. It was common knowledge at the time when affidavits were being taken that allegations of serious police misconduct are investigated jointly by Essex County Prosecutor's detectives and officers of the Newark Police Department. Because of this fact, many of the affiants who came to NLSP expressed grave concern that revelation of their allegations to the Prosecutor would result in harassment, intimidation and the forestalling of disciplinary action by the very police personnel against whom their complaints ran.

Prior and subsequent experience of NLSP lends credence to

this widely held view. (i) In a 1966 case, a complainant who had been charged with and subsequently cleared of assault and battery on a police officer and resisting arrest, lodged a complaint of blows struck by the officer with a nightstick resulting in injury to the client's leg. Several witnesses supported his story. The client and NLSP gave full cooperation to the Inspection Division of the Newark Police Department. Neither NLSP nor the complainant had even been notified of any disciplinary action taken against the officer despite several inquiries. (ii) In another case the complainant who lodged charges found herself charged with false swearing upon the testimony of police officers later apparently found by a Grand Jury to have been untrue. To the knowledge of NLSP no action was ever taken against the police.

In spite of the limited effectiveness of resort to the Prosecutor's Office and the apparent lack of interest in police misconduct cases exhibited by the Prosecutor's Office, NLSP was perfectly willing to cooperate with that office. Without request, it sent its summary of the statements in August of 1967, and when, much later, the Prosecutor asked for copies of the statements themselves, they were sent to him promptly.

2. THE RELIABILITY OF NLSP DATA:

"Thereupon, all persons who could be located and identified as having made such statements were subpoenaed and subsequently testified. From this testimony and from an examination of the statements made available by the Project the members of the jury found themselves confronted with certain disturbing facts:"

1. "A substantial number of statements purported to have been made to the Legal Services Project by witnesses appearing before the jury were unsigned by either the witness or by the person taking the statement."

This comment and the other comments of the Grand Jury concerning the quality of the statements received by NLSP reflect the Grand Jury's total lack of understanding of the purposes of NLSP in receiving the statements concerning law enforcement abuses.

NLSP is not a law enforcement agency. It is an agency, the purpose of which is to seek civil remedies for the poor who have suffered legal injuries. During and immediately after the civil disturbances of the summer of 1967, many persons came to NLSP's offices complaining that they had been wronged by law enforcement personnel.

The complaints were so numerous that it was soon apparent that a community problem was involved. NLSP concluded that the most effective way to help the persons who came to it with this kind of

problem was to assemble all the data it could and then make the data available to those agencies which might be able to attack the roots of the problem

NLSP did not have the staff or facilities to make extensive investigations of its own. It could only receive the information given to it and then pass it on to agencies which were in a position to verify it and do something about it.

Thus NLSP furnished copies of the statements to the Governor's Commission, which conducted its own independent investigation of the matters alleged in the statements, and to the President's Commission, which also conducted an investigation.

Based upon its own study, the Governor's Commission found that serious law enforcement abuses had in fact occurred, and it found that there was no effective remedy for those abuses available to citizens who were injured as a result of them. Both the Governor's Commission and the President's Commission proposed means of providing an effective remedy for abuses by law enforcement personnel, and that was the primary objective of NLSP in assembling the statements in the first place.

When one views the purpose of the statements, to provide the basis for further investigation, criticism of their form and substance

seems completely irrelevant. Yet the Grand Jury devoted much adverse comment to these matters.

As with all of the allegations directed at NLSP, the hallmark characteristic of the comment of the Grand Jury quoted above is its vagueness.

In its introductory remarks, the Grand Jury's presentment sets forth that it heard testimony of "more than 100 witnesses" including "the Essex County Medical Examiner and numerous officials, experts and personnel of the New Jersey State Police, the New Jersey National Guard, the Newark police and the Federal Bureau of Investigation." How many civilian witnesses actually testified is therefore unclear, as is the proportion of those witnesses garnered from materials provided by NLSP. Thus, the Grand Jury is left free to render a verdict by innuendo upon the efficacy of NLSP's affidavits without producing any supporting data.

NLSP's own records show that it collected a total of 286 affidavits of which 219 were fully executed. Of this number 44 were addressed directly to riot deaths, of which 28 were fully executed. (Note that this number does not include 3 affidavits concerning the death of James Rutledge, more fully discussed below). Thus the Prosecutor's office was provided with statements almost 76% of which

were sworn to by the witnesses. 65% of the death affidavits were likewise sworn to.

The Grand Jury apparently failed to appreciate that receiving verbal accounts from almost 300 witnesses; recording these in long hand statements; translating them into typewritten affidavit form; reviewing such affidavits with the witnesses; making necessary corrections and additions; and obtaining formal executions is a massive undertaking for an organization which maintains seven offices and takes on approximately 300 new civil cases each month in the course of its normal operations. For these tasks it has available a total of only eight secretaries. That undertaking stretched well into the autumn of 1967 and involved extraordinary effort on the part of NLSP personnel. Some of the witnesses did not return to execute their affidavits, once prepared. Some had moved and could not be located. Many who did not sign a final affidavit signed the long-hand statement originally given to NLSP. The Prosecutor's Office asked for all of the statements, both signed and unsigned, and that is what was delivered.

Moreover, the absence of signatures on some of the affidavits is totally irrelevant. The statements were designed merely to provide leads for an independent investigation by the Prosecutor's

Office or whatever other agencies received them. No one ever suggested that the statements themselves be the basis for any action by the Grand Jury. They provided leads to information whether they were signed or unsigned.

2. "Some witnesses denied in whole or in part having made statements attributed to them."
3. "In some cases, the testimony of witnesses before the Jury differed from the statements, and some repudiated their prior statements while testifying before the Grand Jury."

Illustrative of the danger and unfair uses of such vague comments of the Grand Jury is the fact that when he testified before the Senate Permanent Subcommittee on Investigations, the assistant prosecutor in charge of the Grand Jury testified that the presentment indicates that "in many instances people repudiated statements." In fact the Grand Jury had said in "some" instances statements were repudiated, not "many".

Nowhere is there set forth in the presentment any recital as to the number of persons who gave NLSP statements who testified before the Grand Jury or the number who repudiated their prior statements. Here again is the technique of trial by innuendo employed throughout by the Grand Jury. How many such witnesses testified? How many recanted? Of those who recanted, how many had actually signed the

affidavit subsequently repudiated? What is meant by the words "in whole or in part"? Is bad faith to be imputed to the recorder of the statement (as is obviously the Grand Jury's covert intention) if the witness later alters his account? The Assistant Prosecutor who presented evidence to this Grand Jury well knew that there is nothing uncommon about a witness giving a statement on one occasion and retracting or altering it on a later occasion. Particularly may this be so with a witness of limited education who finds himself totally alone, unrepresented by friends or counsel, in the presence of 23 jurors and a Prosecutor whose structuring of the situation will determine whether the atmosphere is friendly or hostile to that witness.

4. "Many of the statements were couched in language untypical of the persons purported to have made them and in fact many of these persons appeared not to understand the meaning of phrases attributed to them."

It is clear to any knowledgeable attorney that an affidavit, while retaining the thoughts of the affiant, is often couched in the words of the taker. The affiant says, "I'm telling the truth." His attorney records this as "The matters herein set forth are true." These are not the words of the affiant, but they represent what he has asserted. Similarly, it is not uncommon for affidavits to use

legal terminology which reflects what a layman has said in his own words, such as a particular action being "without provocation." Often the affidavits provided by NLSP did not purport to be the spontaneous words of the affiant. To record these words verbatim would have been an impossible (and sometimes unprintable) undertaking. We must assume that the Assistant Prosecutor presenting this matter was aware of these facts but did not share this knowledge with the lay members of the Grand Jury. Again it would seem that problems of this sort are a strange matter for the Grand Jury to criticize when it was given the statements for whatever assistance in their investigation they might provide.

5. "It was found that some of the statements were taken by persons with limited training for this task."

In July, 1967, NLSP had in its employ, in addition to its administrators, 12 attorneys who functioned out of its neighborhood law centers (two of whom were law professors at Seton Hall) and ten regular full time law students from law schools throughout the country, most of them of third year rank, who were attached to the neighborhood law offices. Eight full time law students hired by VISTA were attached to the Administrative Office of NLSP as special project personnel. The Administrative Office Staff also included

an accountant who was a law school graduate, two investigators and an attorney admitted to the Bar of New York who, as a VISTA volunteer, was fulfilling his VISTA obligations by full time legal work for NLSP.

It was this roster of personnel, augmented by volunteer attorneys and some Rutgers law students not employed by NLSP, which bent its efforts towards the documentation of complaints against the police. While some community people brought in witnesses to NLSP, these community people were not the statement takers. It is true that often the statements were taken under difficult conditions and that the facilities for typing them were very limited. In some instances the final product was rough, but the product was sufficient to meet the purposes at hand -- to record the recollections of the witnesses and to provide the basis for subsequent investigation by appropriate official bodies.

C. NLSP'S RELATIONS WITH THE PRESS:

1. "Many of the statements, although withheld from the law enforcement authorities, somehow became available to persons not associated with the Legal Services Project and were quoted freely in the press where they became the basis for what were purported to be factual accounts of riot incidents."

Here the Grand Jury has made a totally unwarranted assumption

that the matters contained in NLSP affidavits were known only to the affiants and NLSP personnel. In fact many of the persons who came to NLSP had previously told their stories to others who were not associated with NLSP in any capacity -- staff, board or volunteer.

The statements and affidavits collected by NLSP, together with the photographs and physical evidence, were kept in its safe which has a lock, the combination of which was known only to full time Administrative Office Personnel. Several requests to read the affidavits were in fact denied. During the week of July 17, 1967, such a request was made both to the Administrator and Assistant Administrator of NLSP by the author of Rebellion in Newark. Both declined to permit any access to NLSP's work product. This refusal was discussed with the President of NLSP's Board of Trustees who reaffirmed NLSP's policy that the statements were to be made available only to persons whose official positions gave them a reason to know.

Requests also came from newspaper reporters, including Roy Arons of the Washington Post, who wrote a detailed account of the riot deaths. All such requests were denied.

The matters set forth in statements and affidavits were in no sense "exclusives". NLSP was not the only agency which was

taking formal, sworn statements. Since various of the statements may have been given by a witness both to NLSP and also to other agencies either at separate times or at the same time, there is undoubtedly a duplication of statements in many instances. Apparently the Grand Jury and the Assistant Prosecutor never called any witnesses from any of the other agencies. This is an incredible omission, particularly when NLSP has stated that it did not make statements available to the press, authors or other unauthorized persons. It is an omission which makes the Grand Jury's statements in this regard totally worthless, and its innuendo that NLSP was the source of data received by representatives of the press irresponsible.

D. ACCOUNTS OF THE DEATH OF JAMES RUTLEDGE:

"It has come to the Jury's attention that many erroneous and deliberately false accounts of this incident have been published and transmitted to various government agencies and to the public, in the form of leaflets, news accounts and a book entitled, Rebellion in Newark. Moreover, the jury found that a distorted photo of the victim depicting a complete mutilation of the body, not resulting from the shooting was distributed in Newark with the inflammatory leaflets attached. The jury finds this act to be despicable and flagrantly irresponsible and designed to inflame unnecessarily an already troubled community. The jury is concerned and believes that adequate steps should be taken by responsible persons in the various agencies such as Newark Legal

Services Project and The American Civil Liberties Union to assure themselves that irresponsible and unauthorized persons should not and will not have access to documents and physical evidence, including photographs, which are the work product of said agencies.

"In the matter of the homicide of James Rutledge, certain statements, later repudiated, were widely circulated by extremist groups along with photographs of the victim's body which had been taken by photographers engaged by the Newark Legal Services Project. These photographs showed the body during the embalming process, a fact ignored or disregarded, but which, in conjunction with the accompanying statements, were well calculated to inflame the minds of those exposed to them."

Here the Grand Jury all but says that NLSP's work product was the direct source of objectionable leaflets, photographs, news and literary accounts which were circulated concerning the death of James Rutledge. These innuendoes are untrue.

1. The Rutledge Affidavits:

During the week of July 17, 1967, NLSP interviewed three juveniles who asserted that they were upon the premises when James Rutledge was killed by law enforcement personnel and who were brought to NLSP by community people. Even at that early date the report which the three juveniles brought to NLSP was common knowledge in many areas of the Negro community. Participating in the interviewing

task were at least two NLSP attorneys and one or more law students. The juveniles claimed to be eyewitnesses to the killing and provided detailed accounts thereof. Their accounts were reduced to affidavit form, but only two of the juveniles actually executed their affidavits. This was accomplished on July 20, 1967.

On Saturday, July 22, 1967, it was reported to NLSP's Administrative Office that LeRoi Jones planned to hold a press conference that day at which he was going to relate in full detail the account of the killing given by the juveniles and that the following day a Washington newspaper was going to run an article on the Rutledge incident. NLSP was seriously concerned about the effect these events would have in the community, and it was concerned for the juveniles involved.

Dickinson R. Debevoise, President of NLSP's Board of Trustees, was in the Administrative Office that Saturday, and he immediately communicated information concerning these developments to Lawrence Hoffheimer, who was the Community Affairs officer of the United States Department of Justice stationed in Newark during the emergency. Mr. Hoffheimer and Mr. Debevoise agreed that United States Attorney David M. Satz, Jr., should be informed and that his assistance should be sought. Mr. Hoffheimer was shown the statements of the juveniles and the photographs of the Rutledge body.

Mr. Hoffheimer reported to Mr. Satz, and Mr. Lofton and Mr. Debevoise went to Mr. Debevoise's private office in order to make further arrangements.

Mr. Satz communicated with Mr. Lofton and Mr. Debevoise during Saturday morning and stated that he was alerting the F.B.I. Throughout the weekend Mr. Satz remained available to assist should the need arise. He asked that arrangements be made for the F.B.I. to interview the juveniles.

Mr. Debevoise and Mr. Lofton concluded that since the juveniles had been charged with offenses in the Juvenile Court in connection with their activities during the disorders, they should have independent counsel, as a conflict of interest might arise were NLSP to represent them.

During the balance of the weekend Mr. Debevoise received several telephone calls from F.B.I. agents asking that arrangements be made for an interview with the juveniles. Mr. Debevoise informed them that he was attempting to locate an attorney to represent the juveniles who was not affiliated with NLSP either as a staff or a volunteer attorney. On Monday morning, July 20, 1967, through the Presidents of the New Jersey and the Essex County Bar Associations, Mr. Debevoise was able to obtain a volunteer attorney to represent the juveniles.

The volunteer attorney was given access to all of the data which NLSP had received from the juveniles, and from that point on he took charge of the matter. He accompanied them when they were interviewed by the F.B.I. and represented them in the various proceedings in which they were involved. NLSP did not involve itself further in the Rutledge matter.

NLSP is confident that the statements of the juveniles which were given to it were not given or shown to the author of Rebellion in Newark (whose preliminary article did not appear in the New York Review of Books until August 24, 1967, prior to the publication of this work in pocket book form) or to any other unauthorized person.

2. The Rutledge Photographs:

Insofar as the photographs of the body of James Rutledge are concerned, either the Grand Jury was not informed of all the facts or else in devising the presentment the Grand Jury failed to disclose them. In either event, the result is the innuendo that NLSP condoned, permitted or encouraged the circulation of inflammatory leaflets and photographs in a city already wracked by death and destruction.

The true facts are as follows:

There was not one set of photographs taken. Two sets of photographs were taken of the Rutledge body.

One set was taken by NLSP's chief investigator. The photographs taken by him did not include the photograph used in the leaflet circulated in the Central Ward of Newark. After they were developed, these photographs were placed and kept in the NLSP safe.

The other set of photographs was taken by a professional photographer who is not in any way and who never was in any way associated with NLSP. He was requested to photograph the body by Mr. Junius Williams, a Yale Law School student who was then director of the VISTA law student group assigned to work with NLSP during the summer. The photographer took five angles of the Rutledge body at the funeral home for the purpose of showing the number and location of the bullet wounds. On the following day he developed several sets of prints, one of which he delivered to the Administrative Office of NLSP, where it has been kept in the safe. The prints are still clean and smooth, belying any suggestion that they were removed and processed in any way after their delivery.

NLSP interviewed the photographer after the Grand Jury presentment was published, and he stated that he retained the negatives and the additional prints. He also stated that he later gave prints to several different persons, none of whom, so far as he knew, were associated with NLSP.

Those are the facts which either were not made known to the Grand Jury or which the Grand Jury chose to ignore when it prepared its presentment.

C O N C L U S I O N

All the dangers of abuse of the presentment procedure have been realized in the present situation. NLSP, an organization which has succeeded in bringing the remedies and protections of the law to many thousands of the residents of Newark's poverty areas, has been attacked and publicly vilified without ever having had a chance to confront its accusers and answer their charges.

It is hoped that this Reply will begin to set the record straight.